



existing districts to the extent possible; (4) maintaining whole counties in the same district to the extent possible; and (5) outlining the districts to be as compact and contiguous as possible.

Leavenworth County has been teamed with the other core counties of the present Second District for over sixty years. Many of the redistricting plans proposed in the legislature, and by the parties in this action, maintain the core of the Second District. Of concern, however, are proposed plans that seek to move Leavenworth County to the First District. Leavenworth County shares significant community interests and bonds with its partners in the Second District. The alliance between Fort Leavenworth and Fort Riley is critical relationship within the Second District. Historically, the two forts have been represented by the same congressional representative since World War II, which provides a necessary cohesive voice for the forts in Congress. Although Leavenworth County has great respect for Kansas' rural and agricultural communities, it has virtually no common interests - especially at the congressional level - with the counties that make up the First District. Leavenworth County is primarily urban, firmly implanted in the Kansas City Metropolitan Area, and largely supported by the military and federal and state correctional industry.

It is imperative the Court adopt a constitutionally sound congressional redistricting map to ensure Keller and all other registered voters in Kansas their constitutional right to a fair and representative election. It is inevitable that some of the Kansas population be shifted to new districts in order to meet the constitutional one man one vote requirement. However, unless there is an appropriate justification to deviate, the shifting should occur within the guidelines and policies outlined by the Kansas Legislature. Many of the previously proposed maps that maintain

Leavenworth County in the Second District show it is possible to meet constitutional requirements and preserve well established communities of interest.

Whether it adopts a proposed map, a modified proposed map, or a map it creates on its own, the Court can and should decide on a map that recognizes and maintains community interests and preserves the core of the existing districts. Keller advocates for such a map with Leavenworth County remaining in the Second District.

## II. LEGAL STANDARD

In Kansas, congressional redistricting is the state legislature's responsibility, but becomes a judicial task when the legislature fails to redistrict after having an appropriate time to do so. *See White v. Weiser*, 412 U.S. 783, 794-95 (1973). Because the current Kansas congressional districting map is unconstitutional and the Kansas Legislature has failed to enact a new redistricting plan, the Court has been forced into the role of decision-maker. The Court has broad discretion to: (1) adopt in whole a proposed plan; (2) adopt a proposed plan with modifications; or (3) draw and adopt its own new plan. *See O'Sullivan, et al. v. Brier, et al.*, 540 F.Supp. 1200, 1202-03 (D.Kan. 1982) (citations omitted). The Court is not required to defer to any proposed plan that has not survived the full legislative process to become law. *See Sixty-Seventh Minnesota State Senate v. Beens*, 406 U.S. 187, 197 (1972).

The sole relevant constitutional requirement imposed upon the plan this Court ultimately adopts is that it must make "as nearly as is practicable one man's vote in a congressional election ... be worth as much as another's." *See O'Sullivan*, 540 F.Supp. at 1203 (quoting *Westberry v. Sanders*, 376 U.S. 1, 7-8 (1964)). In practice, this means the plan should achieve mathematical equality for each district within the state, with the district size pegged to the

mathematical average, or “ideal,” population.<sup>1</sup> In addition, the adopted plan must comply with the federal Voting Rights Act of 1965 and safeguard the rights of minorities. *See White v. Regester*, 412 U.S. 755 (1973).

When crafting a redistricting plan, “a district court should similarly honor state policies in the context of congressional reapportionment.” *White v. Weiser*, 412 U.S. 783, 795 (1973). “In fashioning a reapportionment plan or in choosing among plans, a district court should not preempt the legislative task nor ‘intrude upon state policy any more than necessary.’” *Id.* (citation omitted). In January 2012, the Kansas Legislature agreed to Guidelines and Criteria for 2012 Kansas Congressional and Legislative Redistricting (“Redistricting Guidelines”). *See Joint Stipulation Of Facts* (Doc. 171) at ¶ 45; Exh. 9 thereto (Doc. 171-9). The Legislature’s criteria for reapportionment of congressional districts include the following:

### **Congressional Redistricting**

1. The basis for congressional redistricting is the 2010 U.S. Decennial Census as published by the U.S. Department of Commerce, Bureau of the Census. The “building blocks” to be used for drawing district boundaries shall be Kansas counties and voting districts (VTDs) as their population is reported in the 2010 U.S. Decennial Census.
2. Districts are to be as nearly equal to 713,280 population as practicable.
3. Redistricting plans will have neither the purpose nor the effect of diluting minority voting strength.
4. Districts should attempt to recognize “community of interests” when that can be done in compliance with the requirement of guideline No. 2.
  - a. Social, cultural, racial, ethnic, and economic interests common to the population of the area, which are probable subjects of legislation (generally termed “communities of interest”), should be considered.
  - b. If possible, preserving the core of the existing districts should be undertaken when considering the “community of interests” in establishing districts.

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<sup>1</sup> *See* Justin Levitt, *The Legal Context for Scientific Redistricting Analysis* (Loyola Law School Legal Studies Paper No. 2011-13, 2011) available at <http://ssrn.com/abstract=1798005>.

c. Whole counties should be in the same congressional district to the extent possible while achieving population equality among districts. County lines are meaningful in Kansas and Kansas counties historically have been significant political units. Many officials are elected on a countywide basis, and political parties have been organized in county units. Election of the Kansas members of Congress is a political process requiring political organizations which in Kansas are developed in county units. To a considerable degree most counties in Kansas are economic, social, and cultural units, or parts of a larger socioeconomic unit. These interests common to the population of the area, generally termed “community of interests” should be considered during the creation of congressional districts.

5. Districts should be as compact as possible and contiguous, subject to the requirement of guideline No. 2.

*Id.* Exh. 9 at 2. In evaluating and selecting the congressional redistricting map the Court is guided by factors such as: (1) whether the plan groups together “communities of interest;” (2) whether the plan preserves whole counties and voting districts to the extent possible; (3) whether the plan preserves existing congressional districts; and (4) whether the plan is as compact and contiguous as possible.

### III. ARGUMENT

#### 1. Leavenworth County’s community of interest is in the Second District.

The loadstar in congressional redistrict mapping is the grouping together of as many major communities of economic, social, cultural, racial, and ethnic interests as possible without resulting in unconstitutional population deviations. *See O’Sullivan*, 540 F.Supp. at 1204.

Redistricting Guideline 4 directs that congressional districts should attempt to recognize communities of interests. Exh. 9 at 2 (Doc. 171-9). Leavenworth County is a part of the greater Kansas City Metropolitan area. It is largely an urban county with an overwhelming military and correctional services presence. *See Declaration Of Patrick J. Hurley* (“Hurley Declaration”) at ¶

5. In addition to Fort Leavenworth, the 35th Infantry Division of the National Guard, and the federal and military prisons, Leavenworth County is home to a Veterans Affairs hospital, the

University of St. Mary which owns and operates hospitals in Leavenworth (St. Johns), Topeka (St. Francis), and Kansas City (Providence), and two federal cemeteries. *Id.*

Leavenworth County has been grouped with Shawnee and Riley Counties in the same congressional district for over sixty years - known as the First District until 1970 and the Second District since. *Id.* Leavenworth, Shawnee, and Riley Counties, as well as the portion of Douglas County that moved into the Second District in 2002, share significant common economic, social, and cultural interests.

Leavenworth and Riley Counties have the state's two military forts and military communities. Kansas State University, located in Riley County, has developed Homeland Security Studies masters and Ph.D programs relying on federal Defense Department funds with the goal of broadening the educational spectrum of the U.S. Army Command and General Staff College at Fort Leavenworth.<sup>2</sup> These programs are intimately intertwined with the U.S. Army Command and General Staff College and certain required courses must be taken at the educational facilities at Fort Leavenworth. *Id.*

Manhattan, located in Riley County, is the selected site for the new National Bio and Agro-Defense Facility (NBAF). Initially, Fort Leavenworth was a potential site for this national homeland security project. *See* Declaration of Bruce Snead, ¶ 8. Leavenworth County and Leavenworth County worked closely with Riley County and Fort Riley to bring the NBAF facility to Kansas. *See* Declaration of Frank Beer, ¶ 21. The cooperation, unprecedented coordination, and pursuit of this common interest was critical to the federal government's decision to locate the nationally recognized NBAF project in Manhattan. *Id.*; Snead Decl., ¶ 8.

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<sup>2</sup> *See* Kansas State University, Security Studies, *Frequently Asked Questions*, available at <http://www.k-state.edu/securitystudies/pages/FAQs.html> (last visited May 27, 2012).

Leavenworth and Shawnee Counties each are home to one of the state's three Veterans Affairs (VA) hospitals, with the third located in Wichita. *See* Hurley Declaration at ¶ 5. The Leavenworth and Shawnee County VA hospitals are partnered together and make up the VA Eastern Kansas Health Care System. *Id.* These hospitals are wholly funded by the federal government making it necessary for them to have a cohesive and united voice in Congress.

At least one congressional redistricting plan is being proposed that places Leavenworth County in the First District. *See e.g.*, Kansas Six Map. The First District encompasses all of western Kansas. *See* Hurley Declaration at ¶ 5; *O'Sullivan*, 540 F.Supp. at 1205. It is primarily rural and contains as many adjoining agriculturally oriented counties as necessary to meet equal population requirements. *Id.* In contrast, Leavenworth County is largely urban with a minor amount of agriculture. *Id.* Leavenworth County's economy is significantly derived from various military operations, correctional institutions, education and health care. *Id.* Leavenworth County also has close economic ties to the Kansas City metropolitan area and is an active member of the Mid-American Regional Conference (MARC), which promotes and funds economic, health care, environmental, and transportation development in the metropolitan area. *Id.* Leavenworth County has no significant economic, social or cultural interests in common with the counties of the First District. To the contrary, Leavenworth County's military and correctional industry interests would directly compete for federal funding with the sprawling First District's agricultural interests.

Additionally, being located on the eastern state line bordering Missouri, Leavenworth County is geographically as far removed from the First District as it can get. Using the most direct route it is approximately 463 miles from the City of Leavenworth to Elkhart, Kansas - the

county seat of Morton County in the southwest corner of the First District. Within that distance the First District crosses numerous smaller community media markets making it difficult for the media to track and report on the congressperson and his or her actions. *See* Jason C. Miller, *Community As A Redistricting Principle: Consulting Media Markets In Drawing District Lines*, 86 Ind. L. J. Supp. 1, 3 (2010). This in turn would make it very difficult for Leavenworth County residents to identify their congressperson and to oppose or challenge their policies and actions through letters to the editor, paid media, and the like. Moreover, the congressperson responsible for a First District that spanned from the southwest to northeast corners of Kansas, and bordered Colorado, Oklahoma, Nebraska and Missouri, would be pressed to adequately represent Leavenworth County's interests that compete with the rest of the district.

The Leavenworth County Board of County Commissioners has unanimously voted to oppose and object to the inclusion of Leavenworth County in the First District. *See* Hurley Declaration, ¶ 3. The County Commissioners have also determined that Leavenworth County lacks common interests with the vast majority of the counties in the First District. *Id.* at ¶ 5. Similarly, the Leavenworth City Commission has voted to object to the inclusion of the City of Leavenworth in the First District and to state that their citizens' interests are best served by the city and county remaining in the Second District. *Id.* at ¶ 4.

**2. Fort Leavenworth and Fort Riley should remain together in the Second District.**

Kansas' two military forts have been in the same congressional district since shortly after World War II. *See* Exh. 1202. In the last redistricting during 2002, the Republican Caucus of the Special Committee on Redistricting specifically adopted a priority that Fort Leavenworth and Fort Riley, located in Leavenworth and Riley Counties, remain together in the Second District.

*See Graham v. Thornburgh*, 207 F.Supp.2d 1280, 1286-87 (D.Kan. 2002). This Court's decision in the 1982 congressional redistricting contest also noted the importance of keeping the two forts together in the Second District. *See O'Sullivan*, 540 F.Supp. at 1205.

In a study prepared for the Governor's Military Council in November 2009, the two forts combined were responsible for 7.6% of Kansas' employment and 7.9% of Kansas earnings. *See Kansas Military Analysis - Fiscal and Economic Impact of Military Activity In Kansas*, November 2009, at 10-11 (Exh. 1201). These two installations' impact on Kansas' economy and overall economic well-being is obvious and significant.

It is of great importance and benefit to Kansas, both forts and their communities, the federal government, and the country's national security for the forts to be represented by the same congressperson. Although Fort Leavenworth is considered an intellectual installation and Fort Riley a troop and combat installation, our country has so integrated military operations that coherent interaction between the two forts is necessary and vital to their respective missions. It is imperative that the congressional representation of both forts be intimately aware, knowledgeable, and committed to the future of both forts. This is especially true now more than ever with the current financial obligations facing Congress. A congressional redistricting map that separates Fort Leavenworth and Fort Riley divides their congressional representation, creates divergent interests, weakens their commonality, and will not only be detrimental to Kansas' economy but our national security.

Any time the forts want to do something, for example construct new facilities or expand operations, they must turn to Congress for the funding. Divided congressional representation jeopardizes the forts' abilities to obtain necessary funding for operations, programs and projects

each requires. Funding for the forts is highly complex and comes from various federal sources. It is critical to have one knowledgeable voice that understands the needs and priorities of both forts. If each is represented by a separate voice, competing interests are likely to arise. In addition to having the voice for both forts fragmented, it may lead to a situation where politics impedes or kills the ability to obtain support and funding for projects. Such a situation could be exacerbated if the forts were represented by opposing political parties, or separate representatives from the same party but with divergent political allies within Congress.

The ties that bind the two forts together economically, politically, and culturally are as strong or stronger than any other community interest ties in the state. It is hard to imagine a reason that would justify separating them into different congressional districts and putting the great economic benefit they generate for Kansas at risk. As mentioned, having the forts in the same congressional district is crucial to maximizing synergy between them, which is vital to the Kansas economy, our military and their families, and the thousands of Kansas civilians that work on or around the forts. The logic is unavoidable that Fort Leavenworth and Fort Riley, and the counties they sit in, should remain together in the Second District.

**3. The new redistricting plan should preserve the existing core.**

The legislature's Guideline 4(b) indicates that, if possible, the core of the existing districts should be preserved in the new redistricting plan. Many of the proposed plans meet the near equal vote requirement and maintain the cores of the existing districts, including the Second Districts' longstanding core of Leavenworth, Shawnee and Riley Counties. Proposed plans that cherry pick Leavenworth County and place it in the First District do not recognize Guideline 4 (b).

#### IV. CONCLUSION

It is possible to equalize the population within the congressional districts, to preserve the cores of the districts and communities of interest, and maintain Leavenworth County in the Second District. There are proposed maps that do so. The Court is urged to either adopt one of those maps or draw its own that reaches the same result.

Respectfully Submitted,

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#### **CERTIFICATE OF SERVICE**

I hereby certify that on May 28, 2012, I filed a true and correct copy of the above and foregoing with the Clerk of the District Court through the CM/ECF system, which is to serve notice of the filing on all interested parties in this action who have entered an appearance, either pro se or through an attorney of record.

/s/ W. Greg Wright  
W. Greg Wright